IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL petition No. 2160 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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AADAMBHAI MAMADBHAI DHUDHA, - Applicant(s)
Versus
THE STATE OF GUJARAT - Respondent(s)

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Appearance :
MR DM AHUJA for Applicant(s) : 1,MR.NITINCHANDRA DAVE for Applicant(s) : 1,
MR PD BHATE PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 15/03/2007

ORAL JUDGMENT

1.0 By way of this petition, the externee has challenged the order of externment dated 31.08.2005 passed by the Deputy Police Commissioner, Rajkot (for short 'Externing Authority) as well as order dated 06.03.2006 passed by the Additional Secretary, Home Department, Sachivalaya, Gandhinagar.

2.0 Learned Advocate for the externee has

invited my attention to the show-cause notice dated 28.06.2005 issued by externing Authority. In the said show-cause notice, six offences have been shown as registered against the externee. In pursuance to the issuance of show-cause notice, the order dated 31.08.2005 was passed by the externing Authority.

2.1 The externee has challenged the order of externment on various Counts. However, learned Advocate for the externee, has restricted his arguments to the aspect that the show cause notice issued by the externing Authority is vague in nature because there is no mention about time, place, period and area of operation of prejudicial activities of the externee in the said show-cause notice, and therefore, the order of externment is bad in law and is required to be quashed and set aside.

2.2 In support of his case he has placed reliance on a decision of this Court in the case

of ***"Kalubhai Becharbhai Gohil Vs. State of Gujarat & anr."*** reported in 2003(2) GLR 1612 wherein it is held as under,

> "After receiving reply from the concerned person, the authority is required to apply its mind before passing the final order. Issuance of show-cause notice is, therefore, a matter of substance and not a formality. Looking to the four instances cited in the show-cause notice, it is impossible for anyone to give appropriate reply, because, in a very vague manner, the incidents are described. The authority at least should have given some particulars at least about particular month, in which the so-called incident had happened, and should have given some better description of the are where the incident had happened. Mere allegation that some 8 or 9 months back, at midnight, the externee had visited house of someone, can never be said to be compliance with the requirement of giving particulars in the show-cause notice. Even if the authority may not be supposed to give the exact date on which the aforesaid incident had happened, at least is required to be given so that a person can give an effective reply. At the cost of repetition, it is stated that the authority has not given the month during which the so-called act is committed by the externee. The notice in question, therefore, on the face of it, is absolutely vague."

3.0 On the contrary, Learned A.P.P. has

supported the orders of the Authorities and has submitted that the authorities are invested with the powers to extern such miscreants from adjoining districts by the provision itself for a period necessary and therefore the order cannot be challenged.

4.0 Heard learned counsel for the parties and perused the documents placed on record. In my view externing authority before passing the order of externment, must satisfy subjectively that no witnesses are willing to come forward to depose against the externee. In the case on hand, in the show cause notice dated 28.06.2005, the Authority has vaguely mentioned that there are six cases registered against the externee. However, the Authority has not given any details pertaining to the aforesaid offences i.e. place, period and area of operation of prejudicial activities of the externee. Hence, in view of the above discussion as well as in view of the decision of this Court in the case of "***Kalubhai***

Becharbhai Gohil”(Supra), the order of externment deserves to be modified.

5.0 In view of the above, the petition is partly allowed. The period of externment is reduced to **ONE YEAR.** The orders dated 31.08.2005 passed by the Deputy Police Commissioner, Rajkot as well as order dated 06.03.2006 passed by the Additional Secretary, Home Department, Sachivalaya, Gandhinagar are modified to the aforesaid extent. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(K.S. Jhaveri,J.)

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